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UNCLAS SECTION 01 OF 02 OTTAWA 000448

SIPDIS

SENSITIVE
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PASS TO USTR FOR SULLIVAN, MELLE, ESPINELL, AND GARDE
STATE FOR EB/TPP/IPE BOGER AND WALLACE AND WHA/CAN

E.O. 12958: N/A
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [CA](#)
SUBJECT: CANADA: 2007 SPECIAL 301 RECOMMENDATION

REF: A. STATE 7944

[1](#)B. 06 OTTAWA 3179
[1](#)C. 06 OTTAWA 3171
[1](#)D. 06 OTTAWA 2021
[1](#)E. 06 OTTAWA 406
[1](#)F. MONTREAL 58
[1](#)G. 06 MONTREAL 1220
[1](#)H. 06 MONTREAL 436
[1](#)I. 06 MONTREAL 365
[1](#)J. 06 TORONTO 2326
[1](#)K. 06 TORONTO 2919
[1](#)L. 06 TORONTO 2908
[1](#)M. TORONTO 45
[1](#)N. TORONTO 60

[1](#)1. (SBU) Summary and Recommendation: Despite optimism after the Conservative Party took power in early 2006, Canada's track record on strengthening IPR protection has remained disappointing. With one notable exception regarding pharmaceutical data protection, the GOC has made no discernable progress towards addressing USG concerns stated in last year's Special 301 report. These include updating Canada's out-of-date copyright laws, ratifying and implementing the WIPO Internet Treaties that it signed in 1997, and improving lackluster IPR enforcement. In addition, despite growing awareness that Canada has become a major international source for pirated DVD movies from U.S. studios, the GOC appears disinclined towards criminalizing the act of camcording in theaters. In essence, there have been numerous meetings, numerous Canadian promises, and seemingly no substantive action on the part of the GOC. Therefore, the Embassy recommends that unless there is substantial progress by the GOC in the next few weeks, Canada should be elevated to the Special 301 Priority Watch list. End Summary and Recommendation.

Copyright Legislation) Still Not Ready

[1](#)2. (SBU) The GOC continues to discuss proposed copyright legislation in preparation for introduction in Parliament. Although Embassy contacts report that the legislation should be presented "this spring," the expected introduction date has been delayed numerous times from the original target date of the fall of 2006. There appears to be a lack of consensus between Canadian Heritage and Industry Canada officials on the substance of the legislation. Canadian Heritage and Industry Canada officials responsible for drafting the copyright bill decline to discuss details of the legislation because of Cabinet secrecy rules - but tell us that USG views are well known, including our concerns with C-60, the Liberal government's copyright bill that failed to pass Parliament

because of the early 2006 Federal election.

13. (SBU) Building on USTR Schwab's October 11th letter to Industry Minister Bernier on IPR protection, the Ambassador raised our concerns regarding the delay in introducing copyright legislation in meetings with Bernier and Heritage Minister Oda. The Ambassador also wrote to Prime Minister Harper, stating that improving IPR protection in Canada is the USG's top priority in our bilateral economic agenda and urged the quick introduction of a copyright bill in Parliament. The Ambassador subsequently met and discussed the importance of a strong copyright bill with both the Prime Minister's policy advisor and his political advisor. Attempts by the Ambassador to personally discuss this matter with the Prime Minister's Chief of Staff were unsuccessful. EMIN also discussed the importance of effective IPR protection with the Prime Minister's office, and Embassy officers have repeatedly raised IPR concerns with their GOC contacts. Additionally, Tom Donahue, President of the U.S. Chamber of Commerce, expressed U.S. industry's concern about QChamber of Commerce, expressed U.S. industry's concern about Canada's lax IPR protection to Prime Minister Harper in January. Mission Canada personnel are starting to speak out publicly on the IPR issue. The Ambassador routinely highlights U.S. concerns regarding Canada's copyright laws in his speeches and plans to issue an op-ed on this subject in the coming weeks.

14. (SBU) Despite our efforts, we have no firm indication of either the content or expected introduction date of the copyright bill.

Border Enforcement Improvements) Still No Action

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15. (SBU) A Canadian interagency group set up more than two years ago continues to examine "best practices" and regulations for improving IPR enforcement on Canada's borders. GOC officials are vague when formal recommendations will be made to Cabinet, but have said that the work of the group is "far advanced." GOC officials acknowledge that Canada is the only G-7 country yet to update its border enforcement regime, and appear to recognize that border officials should receive "ex officio" powers to seize suspected counterfeit and pirated goods. Officials also acknowledge that current arrangements between customs officials and the Royal Canadian Mounted Police (RCMP) for seizing illegal goods are cumbersome. Fortunately, law enforcement officials in some parts of Canada are occasionally willing to investigate and shut down illegal DVD operations, such as occurred in August 2006 in Toronto where local police arrested four individuals, seized over 140 DVD burners, and confiscated more than 20,000 counterfeit movie DVDs (ref J). In December, Toronto police raided counterfeit DVD and CD outlets, seized thousands of copies, and arrested three (ref K). But such raids have been rare. Counterfeit DVD manufacturing and piracy distribution centers continue to thrive in parts of Canada, including Toronto (ref N), because local courts are back-logged on IPR cases, and there is limited law enforcement and judicial resources dedicated to the problem (ref L).

Camcording) GOC Unwilling to Recognize as a Problem

16. (SBU) Camcording a movie in a Canadian theater may be technically illegal, but enforcement has been effectively non-existent. In the rare instance where a case moves through the Canadian justice system and the perpetrator is found guilty, he usually receives a light fine and no jail time. This is a key reason why Canada has become a significant source of international pirated DVDs, mostly of

first-run movies from U.S. film studios. Despite extensive and growing media coverage of the camcording issue, Twentieth Century Fox's public threats to delay the release of its movies in Canada, and industry estimates that 20 to 25 percent of pirated movies sold worldwide are sourced in Canada (see refs F, G, and I), Justice Minister Nicholson states that existing laws are sufficient to prevent camcording in Canadian theaters. RCMP officials also admit that cracking down on theater camcording is a very low priority due to limited resources.

¶7. (SBU) Camcording a movie for commercial use is a federal criminal offense, but proving commercial intent is a giant legal hurdle that makes convictions difficult. The current law also denies theaters immediate legal recourse against patrons caught camcording movies. Police will not arrest anyone caught camcording and the theater operator cannot confiscate or erase the recording of the movie.

Data Protection) The only good news

¶8. (SBU) As reported in ref D, the GOC published new data protection measures for pharmaceuticals in October, 2006. These new regulations provide eight years of data exclusivity for new drugs. The U.S. pharmaceutical industry is generally pleased with the new data protection regulations and considers them a significant step forward. Qconsiders them a significant step forward.

Recommendation: Priority Watch List

¶9. (SBU) Although the new data protection regulations are a notable step, the GOC has failed to improve IPR protection in other areas of concern. Given the lack of action on copyright legislation, continued poor enforcement, and the growing camcording problem, the Embassy recommends that unless there is substantial progress by the GOC in the next few weeks, Canada should be elevated to the Special 301 Priority Watch list.

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WILKINS